

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE JOINT RESOLUTION NO. 44
96TH GENERAL ASSEMBLY

4682L.05C

D. ADAM CRUMBLISS, Chief Clerk

JOINT RESOLUTION

Submitting to the qualified voters of Missouri, an amendment repealing sections 25(a), 25(d), and 25(e), of article V of the Constitution of Missouri, and adopting three new sections in lieu thereof relating to nonpartisan judicial commissions.

Be it resolved by the House of Representatives, the Senate concurring therein:

That at the next general election to be held in the state of Missouri, on Tuesday next following the first Monday in November, 2012, or at a special election to be called by the governor for that purpose, there is hereby submitted to the qualified voters of this state, for adoption or rejection, the following amendment to article V of the Constitution of the state of Missouri:

Section A. Sections 25(a), 25(d), and 25(e), article V, Constitution of Missouri, are repealed and three new sections adopted in lieu thereof, to be known as sections 25(a), 25(d), and 25(e), to read as follows:

Section 25(a). Whenever a vacancy shall occur in the office of judge of any of the following courts of this state, to wit: The supreme court, the court of appeals, or in the office of circuit or associate circuit judge within the city of St. Louis and Jackson County **and any other judicial circuit outside of the city of St. Louis and Jackson County which has, in accordance with the provisions of section 25(b) of this article, elected to have their circuit and associate circuit judges appointed by the governor in the manner provided in this section**, the governor shall fill such vacancy by appointing one of [three] **five** persons possessing the qualifications for such office, who shall be nominated and whose names shall be submitted to the governor by a nonpartisan judicial commission established and organized as hereinafter provided. [If the governor fails to appoint any of the nominees within sixty days after the list of nominees is submitted, the nonpartisan judicial commission making the nomination shall appoint

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 one of the nominees to fill the vacancy.] **The governor may veto the first list of nominees**
13 **submitted by notifying the commission of his or her objection within sixty days after the**
14 **first list of nominees is submitted to the governor. The commission shall thereafter submit**
15 **a new list of nominees for the governor's consideration. The new list of nominees shall**
16 **contain the names of five persons possessing the qualifications for such office and shall not**
17 **include the names of any person submitted on the first list of nominees. The governor may**
18 **appoint a nominee from either the first or the second list. If the governor fails to appoint**
19 **any of the nominees from either the first or the second list within sixty days after the**
20 **second list of nominees is submitted, the nonpartisan judicial commission charged with**
21 **submitting the nominations shall appoint one nominee from the second list of nominees to**
22 **fill the vacancy.**

Section 25(d). Nonpartisan judicial commissions whose duty it shall be to nominate and
2 submit to the governor names of persons for appointment as provided by sections 25(a)-(g) are
3 hereby established and shall be organized on the following basis: For vacancies in the office of
4 judge of the supreme court or of the court of appeals, there shall be one such commission, to be
5 known as "The Appellate Judicial Commission"; for vacancies in the office of circuit judge or
6 associate circuit judge of any circuit court subject to the provisions of sections 25(a)-(g) there
7 shall be one such commission, to be known as "The Circuit Judicial Commission", for each
8 judicial circuit which shall be subject to the provisions of sections 25(a)-(g); the appellate
9 judicial commission shall consist of [a judge of the supreme court selected by the members of
10 the supreme court, and the remaining members shall be] **nine members** chosen in the following
11 manner: The members of the bar of this state residing in each court of appeals district shall elect
12 one of their number to serve as a member of said commission, and the governor shall appoint one
13 citizen, not a member of the bar, **nor the spouse of a member of the bar**, from among the
14 residents of each court of appeals district, to serve as a member of said commission, **and an**
15 **additional citizen, not a member of the bar, nor the spouse of a member of the bar, from**
16 **anywhere in the state, and the president pro tem of the senate shall appoint one citizen**
17 **from anywhere in the state, and the speaker of the house shall appoint one citizen from**
18 **anywhere in the state**, and the members of the commission shall select one of their number to
19 serve as [chairman] **chair. Every appointment to the appellate judicial commission, except**
20 **for the members appointed by the president pro tem of the senate and the speaker of the**
21 **house, shall be subject to the advice and consent of the majority of the senate, who shall**
22 **confirm or reject such appointment within thirty legislative days of appointment by the**
23 **governor.** Each circuit judicial commission shall consist of five members[, one of whom shall
24 be the chief judge of the district of the court of appeals within which the judicial circuit of such
25 commission, or the major portion of the population of said circuit is situated and the remaining

26 four members shall be] chosen in the following manner: The members of the bar of this state
27 residing in the judicial circuit of such commission shall elect two of their number to serve as
28 members of said commission, and the governor shall appoint [two] **three** citizens, [not members
29 of the bar,] from among the residents of said judicial circuit, **who shall not be members of the**
30 **bar, nor the spouse of a member of the bar**, to serve as members of said commission, the
31 members of the commission shall select one of their number to serve as [chairman] **chair**; and
32 the terms of office of the members of such commission shall be [fixed by law, but no law shall
33 increase or diminish the term of any member then in office.] **four years expiring on January**
34 **fifteenth of the fourth year, and each four-year term shall begin at the expiration of the**
35 **term immediately preceding it. No law or court rule shall increase, diminish, or otherwise**
36 **adjust the terms of any member. At the time of the adoption of this section, current terms**
37 **of members of all such commissions shall expire and new members shall be selected in**
38 **accordance with this section. Every appointment to a circuit judicial commission shall be**
39 **subject to the advice and consent of the majority of the senate, who shall confirm or reject**
40 **such appointment within thirty legislative days of appointment by the governor. A**
41 **governor first taking office shall have the authority, within sixty days of taking the oath**
42 **of office, to remove any of the members of the appellate judicial commission or the circuit**
43 **judicial commission appointed by a preceding governor, but not the members elected by**
44 **the members of the bar of this state, and to appoint such members as he or she determines**
45 **appropriate subject to the provisions of this section.** No member of any such commission
46 [other than a judge] shall hold any public office, and no member shall hold any official position
47 in a political party. Every such commission may act only by the concurrence of a majority of its
48 members. The members of such commission shall receive no salary or other compensation for
49 their services but they shall receive their necessary traveling and other expenses incurred while
50 actually engaged in the discharge of their official duties. **All such commissions shall discharge**
51 **their duties in accordance with the policy of promoting openness and public access. The**
52 **list of applicants for any judicial vacancy shall be a public record and their names shall be**
53 **posted on the supreme court's website. All information available to such commissions in**
54 **their proceedings shall be made available to the governor. All hearings, debates, and votes**
55 **of the commission shall be open to the public and to the press, and such meetings shall be**
56 **held on no less than seventy-two hours public notice. Every applicant nominated and**
57 **whose names shall be submitted to the governor as provided in section 25(a) of this article**
58 **shall be subject to a background check, including a criminal check, which shall not be a**
59 **public record but shall be available to the commission and the governor. Sessions or**
60 **communications not open to the public shall be limited to those areas relating to the**
61 **interviews by the commission, internal deliberations of the commission concerning the final**

62 **list of five qualified persons to be submitted to the governor, matters of national security,**
63 **or allegations, not to include convictions, of criminal or morally reprehensible behavior.**
64 All such commissions shall be administered, and **the procedures for** all elections provided for
65 under this section shall be held and regulated, under such rules as the [supreme court shall
66 promulgate] **commission shall establish so long as such rules are in accordance with the**
67 **provisions of this article and not superseded by subsequently enacted legislation.**

Section 25(e). All expenses incurred in administering sections 25(a)-(g), when approved
2 by the [supreme court] **commissioner of administration**, shall be paid out of the state treasury.
3 The [supreme court] **commission** shall certify such expense to the commissioner of
4 administration, who shall draw his warrant therefor payable out of funds not otherwise
5 appropriated.

Section B. Pursuant to chapter 116 and other applicable constitutional provisions and
2 laws of this state allowing the general assembly to adopt ballot language for the submission of
3 a joint resolution to the voters of this state, the official ballot title of the amendment proposed
4 in section A of this bill shall read as follows:

5 "A 'yes' vote will amend the Constitution of the State of Missouri to allow the governor
6 to appoint four of the members of the appellate judicial commission and three of the members
7 of the circuit judicial commission subject to the advice and consent of the Senate, modify the
8 procedures for selecting judges from commission recommended lists of nominees, and
9 require openness and public access to nominee lists and some hearings, debates, and votes of
10 judicial commissions.

11 A 'no' vote would not amend the Constitution of the State of Missouri."

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